

REMARKS

Applicant has carefully considered the Office Action of July 12, 2005 and offers the following remarks in response thereto.

Applicant appreciates the indication that claims 1-14, 21, 24-27, 39, 40, 45, 50-61, and 63-71 are allowed and that claims 16, 18, and 19 contain allowable subject matter.

Claims 15, 17, 20, 22, and 23 were rejected under 35 U.S.C. § 103 as being unpatentable over Fatehi in view of Kusyk. Applicant respectfully traverses. For a reference to be available for this use under 35 U.S.C. § 103, the reference must be available under 35 U.S.C. § 102 and not subject to one of the exceptions set out in 35 U.S.C. § 103(c).

In the present application, the Patent Office relies on Kusyk, which is commonly owned with the current application. Specifically, the present application is assigned to Nortel Networks Limited as evidenced by the assignment recorded at Reel/Frame 011679/0245. Kusyk on face is likewise assigned to Nortel Networks Limited. Kusyk was filed before Applicant's filing date, but issued after Applicant's filing date. Thus, Kusyk only qualifies as prior art, if at all, under 35 U.S.C. § 102(e). 35 U.S.C. § 103(c) indicates that Kusyk does not qualify as prior art under 35 U.S.C. § 103/102(e). Therefore, since Kusyk is not prior art under 35 U.S.C. § 103, the rejection is improper. Since the rejection is improper, the claims are allowable.

If the Patent Office requires further evidence of the common ownership of the application and Kusyk, Applicant requests that the Examiner telephone the undersigned so that the evidence may be submitted expeditiously.

Applicant requests reconsideration of the rejection in light of the remarks presented herein. Kusyk is not prior art under 35 U.S.C. § 103 by virtue of its common ownership with the current application. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

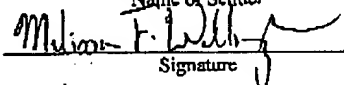
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